

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

**THE TORONTO-DOMINION BANK**

Applicant

and

**BRAD DUBY PROFESSIONAL CORPORATION**

Respondent

APPLICATION UNDER SUBSECTION 243 (1) OF THE BANKRUPTCY AND INSOLVENCY  
ACT, R.S.C. 1985, C. B-2, AS AMENDED AND SECTION 1010 OF THE COURT OF JUSTICE  
ACT, R.S.O. 1990 C. C.43, AS AMENDED

**RESPONDING MOTION RECORD OF SOMOGYI LAW GROUP  
(Returnable October 13, 2022)**

September 15, 2022

**SOMOGYI LAW GROUP**  
758 Sheppard Avenue West  
Toronto, ON, M3H 2S8

**Adam Somogyi (LSO# 61708U)**

[adam@slglegal.ca](mailto:adam@slglegal.ca)

Tel: 416-236-3060

Fax: 416-236-1809

Responding "New Counsel"

**TO: SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
330 University Avenue  
Toronto, ON, M5G 1R8**

**TO:**           **AIRD & BERLIS LLP**  
Brokefield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

Kyle Plunkett & Nathan Gates

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[ngates@airdberlis.com](mailto:ngates@airdberlis.com)

Lawyers for the Applicant, Toronto-Dominion Bank

**AND TO:**       **HARRISON PENSA LLP**  
Barristers & Solicitors  
130 Dufferin Avenue, Suite 1101  
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**Timothy C. Hogan (LSO # 36553S)**  
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[rdanter@harrisonpensa.com](mailto:rdanter@harrisonpensa.com)

Tel: 519-679-9660  
Fax: 519-667-3362

Lawyers for the Receiver, MNP Ltd.

**AND TO:**       [melissa@chorneylawyers.com](mailto:melissa@chorneylawyers.com)

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# INDEX

**ONTARIO  
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**B E T W E E N:**

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**RESPONDING MOTION RECORD OF SOMOGYI LAW GROUP  
(Returnable October 13, 2022)**

**RESPONDING MOTION RECORD INDEX OF SOMOGYI LAW GROUP**

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# TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**B E T W E E N:**

**THE TORONTO-DOMINION BANK**

Applicant

and

**BRAD DUBY PROFESSIONAL CORPORATION**

Respondent

**RESPONDING AFFIDAVIT OF CLAUDIA ABREU**

I, Claudia Abreu, of the City of Mississauga, in the province of Ontario,

**MAKE OATH AND SAY:**

1. I am a Law Clerk at Somogyi Law Group, new counsel on behalf of four of five files subject to the within Motion. I have personal knowledge of these files and have spoken with Mr. Adam Somogyi in order to inform myself for the purposes of making this Responding Affidavit. I believe all of the following statements to be true.
2. The five client files which Somogyi Law Group took over from Brad Duby Professional Corporation ("BDPC") are, as follows:

- Jogarajah, Immaculate
- Ghany, Ameer
- Chang, Xin (Melissa)
- Bernier, Katherine
- Persaud, Renuka

3. In respect of the client, **Jogarajah, Immaculate**, Brad Duby and BDPC were sued by way of a Statement of Claim bearing Court File No.: CV-21-00002040-0000, as a result of serious negligence arising from Mr. Duby's handling of Ms. Jogarajah's claims. Attached hereto and marked as **Exhibit "A"** is the Statement of Claim, issued, December 17, 2021.
4. In respect of the client, **Chang, Xin (Melissa)**, BDPC's fees and disbursements were settled with the Receiver on a one-time basis.
5. This leaves only three files to which this Motion shall relate to. In respect of the remaining files,
  - (a) The client, **Ghany, Ameer**, is the spouse of the client, Jogarajah, Immaculate. He retained Somogyi Law Group shortly after examinations for discovery and his file has since settled.
  - (b) The client, **Bernier, Katherine**, retained Somogyi Law Group prior to examinations for discovery and her file has not yet resolved.

(c) The client, **Persaud, Renuka**, retained Somogyi Law Group prior to examinations for discovery and her file has not yet resolved.

6. With respect to the above-noted client files, at 4(a)-(c), no solicitor's account has been rendered by BDPC or the Receiver. With the exception of the client, Ghany, Ameer, no accounting for disbursements allegedly incurred by BDPC, has been rendered.
7. In respect of the client file, Ghany, Ameer, the list of disbursements allegedly incurred by BDPC contain several entries which on their face are not/should not be considered assessable tort disbursements or were in fact actually not paid by the Receiver to third party provider. Attached hereto and marked as "**Exhibit B**" is the account for Disbursements, in respect of the client file, Ghany, Ameer, served by the Receiver on February 10, 2022.
8. Also in respect of the clients' disbursements, disbursements have since been paid by Somogyi to the third party providers directly. Absent a Court Order to the contrary, it is well known that parties themselves remain indebted for disbursements incurred by counsel on their behalf, thereby leaving such clients in a vulnerable position.
9. Attached hereto and marked as "**Exhibit C**" is Somogyi Law Group's emailed reply to the determinable information, dated September 7, 2022.




10. Given that, at most, only three files need to be assessed in respect of the clients taken over by Somogyi Law Group, the most efficient and proportional mechanism of determining same would be the usual assessment under the *Solicitor's Act*. There are no unusual circumstances in respect of these files.
11. Given that the only three files that might need to be assessed all remain at their early stages, *the Solicitor's Act* assessments may all take place in one combined day.
12. Despite any other issues relating to Mr. Duby's passing and the dissolution/bankruptcy of BDPC, there is no reason for the three clients to have their rights prejudiced by precluding the delivery of a Solicitor's account, as provided for in the *Solicitor's Act*, and preventing the client(s) from assessing their (former) solicitor's account in respect of fees and disbursements if necessary.
13. Given the time anyways required for the three clients to assess disbursements in respect of the three clients, there would be little saving of time and/or resources if fees also require an assessment in these matters.
14. The three clients maintain a right to assessment both under the *Solicitor's Act* and their retainer agreements with their former counsel.

15. Barring assessment in the usual manner, in the case of these three clients, is both unprecedented and unnecessary to the administration of justice.

16. The protection of privilege is sacrosanct. Privilege was specifically protected in the Receivership Order of February 21, 2021 at paragraph 5.

17. I make this Affidavit in response to the Motion brought by the Receiver, returnable October 13, 2022, and for no other or improper purpose.

SWORN BEFORE ME )  
at the City of Toronto, in the )  
Province of Ontario, this 15th day of )  
September, 2022. )

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

  
\_\_\_\_\_  
Claudia Abreu

THE TORONTO-DOMINION BANK  
Applicant

-and-

**Court File No.:** CV-21-00657656-00CL  
BRAD DUBY PROFESSIONAL CORPORATION  
Respondent

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

PROCEEDING COMMENCED AT  
TORONTO

**RESPONDING AFFIDAVIT OF CLAUDIA ABREU**

**SOMOGYI LAW GROUP**

758 Sheppard Avenue West  
Toronto ON M3H 2S8

**Adam Somogyi (LSO #61708U)**

[adam@siglegal.ca](mailto:adam@siglegal.ca)

Tel: 416-941-2502

Fax: 416-941-2501

Responding "New Counsel"

# EXHIBIT “A”



Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Electronically issued  
Délivré par voie électronique : 17-Dec-2021  
Oshawa

IMMACULATE JOGARAJAH

Plaintiff

- and -

THE ESTATE OF BRADLEY ROBERT ALFRED DUBY, BRAD DUBY PROFESSIONAL CORPORATION, HANSON DUBY LAWYERS and DUBY & ASSOCIATES

Defendants

**STATEMENT OF CLAIM**

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

This is Exhibit ".....A....." referred to in the affidavit of ...CLAUDIA ABREU... sworn before me at ...TORONTO... this 15<sup>th</sup> day of September 2022

.....  
A Commissioner, etc.

IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$10,000.00 for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim, and \$400.00 for costs, and have the costs assessed by the Court.

TAKE NOTICE: THIS ACION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for Trial or terminated by any means within five years after the action was commenced, unless otherwise ordered by the Court.

DATE:.....

Issued by: \_\_\_\_\_

Local Registrar  
Superior Court of Justice  
150 Bond Street East  
Oshawa, Ontario L1G 0A2

**TO: THE ESTATE OF BRADLEY ROBERT ALFRED DUBY**  
c/o Law Society of Ontario, Trustee Services  
1100-393 University Avenue  
Toronto, ON M5G 1E6

**AND TO: BRAD DUBY PROFESSIONAL CORPORATION**  
2 Clinton Place  
Toronto, ON M5G 1J9

OR AT: Law Society of Ontario, Trustee Services  
1100-393 University Avenue  
Toronto, ON M5G 1E6

**AND TO: HANSON DUBY LAWYERS**  
2 Clinton Place  
Toronto, ON M5G 1J9

OR AT: Law Society of Ontario, Trustee Services  
1100-393 University Avenue  
Toronto, ON M5G 1E6

**AND TO: DUBY & ASSOCIATES**

2 Clinton Place  
Toronto, ON M5G 1J9

OR AT: Law Society of Ontario, Trustee Services  
1100-393 University Avenue  
Toronto, ON M5G 1E6

## C L A I M

1. The Plaintiff, Immaculate Jogarajah (“Immaculate” or “the Plaintiff”), claims:
  - (a) damages for negligence and breach of contract in the amount of \$2,000,000.00;
  - (b) prejudgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (c) her costs of this action together with applicable Harmonized Sales Tax payable pursuant to the provisions of the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended; and
  - (d) such further and other relief as to this Honourable Court may seem just.
  
2. The Plaintiff, Immaculate, resides in the City of Pickering, in the Province of Ontario.
  
3. The Defendant, the Estate of Bradley Robert Alfred Duby, is the Estate of Bradley Robert Alfred Duby (“Mr. Duby”).
  
4. Mr. Duby was a barrister and solicitor licensed to practice law in the Province of Ontario. Mr. Duby passed away unexpectedly on January 28, 2021.
  
5. The Defendant, Brad Duby Professional Corporation, is Mr. Duby’s professional corporation, through which Mr. Duby practiced law.
  
6. The Defendants, Hanson Duby Lawyers and Duby & Associates are law firms having carried on business in Ontario and/or Canada and having provided legal services



pursuant to the Plaintiff the *Business Corporations Act*, R.S.O. 1990, c. B.16, and the *Law Society Act*, R.S.O. 1990, c. L.8.

7. On or about July 12, 2017, the Plaintiff retained the Defendants to represent all of her interests and advance all claims arising from a motor vehicle accident which had occurred on or about August 8, 2010 (the “First MVA”) and a motor vehicle that occurred on or about August 26, 2016 (the “Second MVA”).

8. The third party (tort) claim arising out of the MVA of August 8, 2010 was issued, by another lawyer at another law firm, in Oshawa Superior Court and bears Court File Number: CV-79598-12.

9. In respect of the First MVA, Brad Duby of Hanson Duby Lawyers filed a Notice of Change of Lawyers on August 21, 2017, appointing himself as lawyer of record for the Plaintiff, Immaculate, in an action bearing Oshawa Court File Number CV-79598-12.

10. At the time of Mr. Duby’s retainer, the First MVA had been dismissed for delay. Mr. Duby, on behalf of the Plaintiff, brought an (unopposed) Motion to set aside the dismissal Order and by way of an Order from the Honourable Madam Justice Woodley (“Woodley J.”), dated May 11, 2018, the dismissal Order was set aside and a Timetable was imposed on the parties (the “Timetable”).

11. The Timetable required *inter alia* that the Plaintiff satisfy undertakings by August 1, 2018.

12. Despite the Plaintiff having signed numerous third party request forms, the Defendants did not make any or adequate efforts to satisfy undertakings.

13. The Defendants did not provide the Plaintiff with any or adequate notice that they required undertakings or further information from the Plaintiff, including the consequences of not following the Timetable.

14. As a result of the Plaintiff non-compliance with undertakings and the Timetable, the Defendant in Oshawa Court File Number CV-79598-12 brought a Motion returnable January 18, 2019; in the context of that Motion, Mr. Duby, acting for the plaintiff, provided consent to a further Order by Woodley J. ordering the Plaintiff to satisfy undertakings within 30 days of the date of the Order and pay costs of the Motion in the amount of \$1,250.00.

15. Approximately one year later, the Defendant in Oshawa Court File Number CV-79598-12 brought a further Motion returnable February 28, 2020 seeking the dismissal of that action due to the Plaintiff's non-compliance with the prior Order(s) of Woodley J.

16. The Motion returnable February 28, 2020 was scheduled by the Defendant in Oshawa Court File Number CV-79598-12, following a consultation with the Defendants who at that time, continued to represent the Plaintiffs. Mr. Duby confirmed that someone from his office would attend at that Motion.

17. Nobody appeared for the Plaintiff at the Motion returnable February 28, 2020. As a consequence of that Motion, the Plaintiff's action arising out of the First MVA was

dismissed and costs of the action in the amount of \$10,803.69 and costs of the Motion in the amount of \$1,500.00 were ordered payable by Immaculate to the Defendant in Oshawa Court File Number CV-79598-12.

18. The Plaintiff was never informed by Mr. Duby or the Defendants of the Dismissal of her action.

19. The Defendants failed to issue a third party (tort) claim in respect of the Second MVA.

20. The presumptive limitation period to issue a (tort) claim in respect of the Second MVA expired on or about July 12, 2019.

21. At all material times, the Plaintiff remained under the mistaken belief that the Defendant's had taken the necessary steps to advance the plaintiff's claims against the at-fault party(s) in respect of the Second MVA.

22. At no time prior to the expiration of the presumptive limitation period for the Second MVA, did the Defendants cancel their retainer for the Second MVA or inform the Plaintiff that they would not be proceeding with a tort claim on her behalf.

23. Immaculate has no material legal training or experience. At all material times, Immaculate relied on the Defendant's to advance her claims for the First MVA and for the Second MVA in a reasonable and diligent manner and in accordance with the professional obligations of counsel in the Province of Ontario.

24. The Plaintiff states that as a result of the Defendants' negligence and/or conduct and/or errors or omissions, her ability to advance claims as against the at-fault parties in respect of the First MVA and the Second MVA have been irreparably prejudiced, and she has sustained damages, as will be further described below.

25. The particulars of the Defendants' negligence and/or conduct and/or errors or omissions, or that of their staff, agents or employees for whom the Defendants are vicariously liable, include, but are not limited to, the following acts or omissions:

- (a) They failed to comply adequately or at all with judicial Orders;
- (b) They failed to adequately or at all report developments in their legal work to their client, Immaculate;
- (c) They failed to perform their legal work in a reasonable or competent manner;
- (d) They breached the professional obligations vis-à-vis their client, Immaculate;
- (e) They took advantage of the plaintiff's lack of knowledge of the law and procedure;
- (f) They misrepresented to Immaculate the status and circumstances of her claims;
- (g) By their acts or omissions, they prejudiced Immaculate's legal rights;
- (h) They permitted the lapsing of a limitation period in respect of the Second MVA.
- (i) They breached the trust provided to them by their client and failed to deal

honestly and fairly with their client, Immaculate;

- (j) They employed incompetent staff and/or agents and failed to adequately or at all supervise them;
- (k) They failed to satisfy undertakings on behalf of their client at all or in a timely manner, despite having previously obtained signed authorizations and directions with respect to third party productions;
- (l) They failed to adequately or at all seek instructions from their client, Immaculate;
- (m) They represented to adverse party(s) that they had Immaculate's instruction, despite having not obtained Immaculate's instructions;
- (n) They caused delay in the advancement of Immaculate's claims, such delay cannot be compensated by costs;
- (o) They caused or permitted the spoliation of evidence that would assist Immaculate in her claims;
- (p) They failed to obtain the evidence reasonably necessary to prosecute Immaculate's claims, including but not limited to, having not obtained clinical notes and records and having failed to arrange medical and other examinations and expert reports;
- (q) They failed to undertake any or adequate repair work to fix errors or issues, caused or contributed to by them for which they were aware of or ought to have been aware of;
- (r) They failed to maintain adequate communication with adverse parties, the Court, or their client, as required by their professional obligations;

- (s) They failed to attend at scheduled appearance(s) on Immaculate' s behalf;
- (t) They failed to adequately or at all investigate Immaculate's claims;
- (u) They caused or permitted their client's action bearing Oshawa Court File Number CV-79598-12 to be dismissed, whereas this could have been avoided through their exercise of reasonable diligence and competence;
- (v) They failed to adequately prepare or take steps to prepare the plaintiff for her examination for discovery;
- (w) They failed to adequately communicate with the Plaintiff to obtain from her updates that would have aided in prosecuting the Plaintiff's claims; and
- (x) Any and all of the foregoing.

26. At all material times the Defendants were fiduciaries of the Plaintiff and breached their fiduciary duty, as above.

27. The Plaintiff agreed to retainer agreement(s) with the Defendants. As an express or implied term of same, the Defendants warranted that legal services would be provided in a reasonable and competent manner. Particulars of the Defendants' breach of contract are, included but not limited, to those allegations as set out above.

28. The Plaintiff's damages claimed herein include but are not limited to, the following:

- (a) The quantum of the costs awards owed by the plaintiff in the context of Oshawa Court File Number CV-79598-12, plus applicable fees and interest, if any;

- (b) The quantum of damages that the Plaintiff would otherwise have been able to recover vis-à-vis settlement or judgement from the at-fault party in the First MVA;
- (c) The quantum of damages that the Plaintiff would otherwise have been able to recover vis-à-vis settlement or judgement from the at-fault party(s) in the Second MVA;
- (d) As a result of the handling/mishandling of the plaintiff's legal claims by the Defendant, the Plaintiff has suffered, stress, anxiety, depression and other forms of emotional upset, which shall require counselling and other forms of treatment and expenses; and
- (e) Other damages which are not yet known or quantified but will be particularized prior to the trial of this action.

29. The Plaintiff pleads that as a result of the negligence of the negligence of the at-fault party in the First MVA and the at-fault party(s) in the Second MVA, the Plaintiff has sustained each of the following, as a result of each MVA:

- (a) Physical and psychological injuries and impairments, resulting in permanent and serious impairments of important physical and psychological functions;
- (b) Past and future income loss, loss of competitive advantage, diminution in earning capacity and foreshortened career span;
- (c) Damages for past and future healthcare and rehabilitation and attendant care;

- (d) Damages for losses of housekeeping capacity;
- (e) Other special damages; and
- (f) Other damages which are unknown or unquantified at this time, but will be particularized prior to the trial of this action.

30. The Plaintiff pleads and relies upon the provisions and all relevant amendments of the following legislation:

- (a) *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (b) *Negligence Act*, R.S.O. 1990, c. N.1;
- (c) *Rules of Professional Conduct*, and
- (d) *Solicitor's Act*, R.S.O. 1990, c. S.15

31. The Plaintiff proposes that this action be tried at the City of Oshawa, in the Province of Ontario.

**Date:**.....

**SOMOGYI LAW GROUP**  
758 Sheppard Avenue West  
Toronto, Ontario  
M3H 2S8

**Adam A. Somogyi**  
**(LSO No.: 61708U)**

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Tel. No.: (416) 941-2502  
Fax No.: (416) 941-2501

Lawyer for the Plaintiff



IMMACULATE JOGARAJAH  
Plaintiff

- and -

THE ESTATE OF BRADLEY ROBERT ALFRED DUBY et al.  
Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at  
OSHAWA

**STATEMENT OF CLAIM**

SOMOGYI LAW GROUP  
758 Sheppard Avenue West  
Toronto, ON M3H 2S8

**Adam A. Somogyi**  
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Tel. No.: (416) 941-2502

Fax No.: (416) 941-2501

Lawyer for the Plaintiff

# EXHIBIT “B”

This is Exhibit "B" referred to in the affidavit of CLAUDIA ABREU sworn before me at TORONTO this 15<sup>th</sup> day of September 2022

  
A Commissioner, etc.

From: Matthew Lem <Matthew.Lem@mdp.ca>  
Sent: February 10, 2022 2:50 PM  
To: Claudia Abreu <claudia@slglegal.ca>  
Cc: Adam Somogyi <adam@slglegal.ca>  
Subject: RE: OUR CLIENT: GHANY, Ameer (former Brad Duby file)

Claudia,  
Below is what we have assembled, which we have broken out of what appears to have been tracked together his spouse Immaculate Jogarajah, which we show to also be your client. Accordingly, there may be other amounts belonging to this client.

**BRAD DUBY PROFESSIONAL CORPORATION  
GHANY, Ameer (17-142)**

Date	Payee	Disbursement Description	Inv. No.	Amount	HST	Total
13-Feb-20	ARCG Inc.	CAT Assessment	12880	2,000.00	260.00	2,260.00
31-May-19	Eddy Jang Medicine Professional Corporation	photocopy of records	N/A	48.00	-	48.00
4-Aug-20	Eddy Jang Medicine Professional Corporation	photocopy	N/A	35.00	-	35.00
24-Jan-18	ISB Canada	Driver Record Abstract ( CAN)	P0900720	33.42	4.34	37.76
21-Feb-18	Borg Process Servers Inc.	Process Service	289508	141.00	18.33	159.33
11-Sep-20	Ministry of Health	OHIP Summary	1400	74.00	-	74.00
4-Jan-18	Ministry of Finance	Ministry Fee for Statementt of Claim	1064	220.00	-	220.00
<b>TOTAL</b>				<b>2,551.42</b>	<b>282.67</b>	<b>2,834.09</b>

We again advise that it is the Receiver's position that any unpaid or deferred accounts for medical reports or other expert reports or fees owing for services rendered which may be owing by Brad Duby Professional Corporation cannot be paid to these parties and should be paid to the Receiver pending a determination of entitlement by the Court or an agreement between the parties.

Regards.  
Matthew

Matthew Lem, CIRP, LIT



# EXHIBIT “C”

**Adam Somogyi**


**From:** Adam Somogyi  
**Sent:** Wednesday, September 7, 2022 9:15 AM  
**To:** Tim Hogan; Melissa Sidhu; kplunkett@airdberlis.com; eperitz@jaffeperitz.com; AFederic@lso.ca; nsinjari@naimarklaw.com; shahen@mklegal.ca  
**Cc:** Matthew.Lem@mnp.ca  
**Subject:** RE: Brad Duby PC - CV-21-00657656-00CL ENDORSEMENT [IWOV-HPMain.FID544296]

Mr. Hogan - We adopt the comments by Ms. Sidhu and add the following comments:  
It is acknowledged by the Receiver in the attached document that “all of the Determinable Information is of a confidential and sensitive in nature and may contain details that are subject to solicitor-client privilege.” Paragraph 5 of the Receivership Order of February 21, 2021 specifically excludes disclosure of privileged and statutory prohibited documents.  
In other words, there is currently a Court Order that indicates we must not disclose the Determinable Information to the Receiver. There are also LSO guidelines and confidentiality clause(s) in client release(s). As such, until there is a Court Order overriding same, our position is that we are barred from disclosing the Determinable Information.

Yours very truly,

*Adam A. Somogyi J.D., B.A. (Hons.)*  
Somogyi Law Group  
758 Sheppard Avenue West  
Toronto, ON M3H 2S8

Direct Tel: 416.941.2502  
Fax: 416.941.2501  
Email: [adam@slglegal.ca](mailto:adam@slglegal.ca)

This is Exhibit “.....*C*.....” referred to in the  
affidavit of .....*CLAUDIA ABREV*.....  
sworn before me at .....*TORONTO*.....  
this .....*15<sup>th</sup>* day of .....*September*.....*20.22*  
  
.....  
A Commissioner, etc.

The information contained in the transmission is privileged and confidential and intended only for the use of the individual to whom or the entity to which it is addressed. Somogyi Law Group is a registered business name of Adam Somogyi Professional Corporation.

---

**From:** Tim Hogan <thogan@harrisonpensa.com>  
**Sent:** Tuesday, September 6, 2022 4:53 PM  
**To:** Melissa Sidhu <melissa@chorneylawyers.com>; kplunkett@airdberlis.com; eperitz@jaffeperitz.com; AFederic@lso.ca; Adam Somogyi <adam@slglegal.ca>; nsinjari@naimarklaw.com; shahen@mklegal.ca  
**Cc:** Matthew.Lem@mnp.ca  
**Subject:** RE: Brad Duby PC - CV-21-00657656-00CL ENDORSEMENT [IWOV-HPMain.FID544296]

Counsel

As we approach the hearing in this matter on October 13, 2022, I am following on the below e-mail exchange.

Can you please advise if any of Mr. Somogyi, Ms. Sinjari or Mr. Alexanian have any comments on the attached document with respect to Determinable Information?

We will then circulate all comments to the full service list to seek comments from any other counsel.

Please advise by this Friday September 9, 2022.

Thank-you.

**Tim Hogan** | [HARRISON PENSA LLP](#) | [130 Dufferin Avenue, Suite 1101, London, ON N6A 5R2](#) | *tel*/ 519-661-6743  
| *fax* 519-667-3362 | [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com) Assistant | Cathy Coleiro | *tel*/ 519-850-5568 |  
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**From:** Melissa Sidhu <[melissa@chorneylawyers.com](mailto:melissa@chorneylawyers.com)>  
**Sent:** Thursday, July 14, 2022 6:05 PM  
**To:** Tim Hogan <[thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)>; [kplunkett@airdberlis.com](mailto:kplunkett@airdberlis.com); [eperitz@jaffeperitz.com](mailto:eperitz@jaffeperitz.com); [AFederic@lso.ca](mailto:AFederic@lso.ca); [adam@slglegal.ca](mailto:adam@slglegal.ca); [nsinjari@naimarklaw.com](mailto:nsinjari@naimarklaw.com); [shahen@mklegal.ca](mailto:shahen@mklegal.ca)  
**Cc:** [Matthew.Lem@mnp.ca](mailto:Matthew.Lem@mnp.ca)  
**Subject:** RE: Brad Duby PC - CV-21-00657656-00CL ENDORSEMENT [IWOV-HPMain.FID544296]

[EXTERNAL EMAIL]

Good afternoon Mr. Hogan,

It is our position that the "Determinable Information" propose that we produce is only relevant if the sliding scale approach is adopted by the Court.

Unless and until the sliding scale is approved, which we vigorously oppose, nothing related to our retainer, fees, disbursements or negotiated settlements is relevant to the question of what Mr. Duby or his estate is owed on a *quantum meruit* basis.

What is required to make that determination is a copy of Mr. Duby's file for the relevant client to the date the client retained new counsel. It is my understanding that the law society is in receipt of Mr. Duby's client files.

---

**From:** Tim Hogan <[thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)>  
**Sent:** July 14, 2022 11:25 AM  
**To:** [kplunkett@airdberlis.com](mailto:kplunkett@airdberlis.com); [eperitz@jaffeperitz.com](mailto:eperitz@jaffeperitz.com); [AFederic@lso.ca](mailto:AFederic@lso.ca); [adam@slglegal.ca](mailto:adam@slglegal.ca); [nsinjari@naimarklaw.com](mailto:nsinjari@naimarklaw.com); Melissa Sidhu <[melissa@chorneylawyers.com](mailto:melissa@chorneylawyers.com)>; [shahen@mklegal.ca](mailto:shahen@mklegal.ca)  
**Cc:** [Matthew.Lem@mnp.ca](mailto:Matthew.Lem@mnp.ca)  
**Subject:** Brad Duby PC - CV-21-00657656-00CL ENDORSEMENT [IWOV-HPMain.FID544296]

Counsel

Further to Justice Osborne's endorsement, we have drafted a document with respect to Determinable Information sought by the Receiver for this group's first review, before sending to all New Counsel.

Can we please have your views on the attached so we can work to resolve this issue?

Once we have your views, we will go to the larger group.

Thank-you.

**Tim Hogan** | HARRISON PENZA LLP | 130 Dufferin Avenue, Suite 1101, London, ON N6A 5R2 | *tel* 519-661-6743  
| *fax* 519-667-3362 | thogan@harrisonpensa.com Assistant | Cathy Coleiro | *tel* 519-850-5568 |  
ccoleiro@harrisonpensa.com

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**From:** Alexander, Jonathon (MAG) <Jonathon.Alexander@ontario.ca>  
**Sent:** Monday, June 20, 2022 4:08 PM  
**To:** Tim Hogan <thogan@harrisonpensa.com>; kplunkett@airdberlis.com; Matthew.Lem@mnp.ca;  
eperitz@jaffeperitz.com; AFederic@lso.ca; adam@slglegal.ca; nsinjari@naimarklaw.com;  
savannah@chorneylawyers.com; shahen@mklegal.ca; p.adam@wiselaw.net; alissa@rvlaw.ca  
**Subject:** CV-21-00657656-00CL ENDORSEMENT

You don't often get email from jonathon.alexander@ontario.ca. [Learn why this is important](#)

**EXTERNAL EMAIL**

Hello,

Please see the attached.

*[IF YOU HAVE ANY QUESTIONS AND/OR CONCERNS AFTER THE DAY OF THE EVENT, FURTHER COMMUNICATION SHOULD BE DONE WITH THE COURT ADMINISTRATION. I DO NOT HAVE DIRECT COMMUNICATION WITH THE JUDICIARY AND YOU MAY NOT RECEIVE A RESPONSE IN A TIMELY MANNER]*

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-and-

THE TORONTO-DOMINION BANK  
Applicant

BRAD DUBY PROFESSIONAL CORPORATION  
Respondent

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ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

PROCEEDING COMMENCED AT  
TORONTO

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**RESPONDING MOTION RECORD OF  
SOMOGYI LAW GROUP**

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**SOMOGYI LAW GROUP**  
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Responding "New Counsel"